

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matters of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Developing a Unified Intercarrier Compensation	)	CC Docket No. 01-92
Regime	)	

**REPLY COMMENTS OF CENTURYLINK**

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## TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY .....	1
II. DISCUSSION .....	2
A. There Was Strong Support In The Initial Comments For Two Core ICC Principles – Equal Rights To Compensation For All Providers Of Tandem Switching And Transport Services And A Terminating Carrier Obligation To Allow Direct Termination. ....	2
B. Immediate Adoption Of These Two Broad Principles Would Go A Long Way Toward Addressing Current ICC Concerns – Even If The Commission Delays In Addressing Certain Broader ICC Reform Issues At This Time. ....	5
C. The Few Comments That Oppose These Concepts Are Internally Inconsistent. ....	6
D. The AT&T Proposal Regarding Tariffs Presents Certain Concerns That Must Be Attended-To. ....	9
E. Adoption Of Reform Regarding Traffic Stimulation, 8YY Usage-Based Charges And Database Charges Is Another Immediate And Limited Step That Would Go A Long Way Toward Curbing Current ICC Problems. ....	10
III. CONCLUSION.....	11

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CenturyLink, Inc. (CenturyLink)<sup>1</sup> submits these reply comments in response to the initial comments filed in the above-referenced matter.<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

As CenturyLink noted in its comments, the Commission has an historic opportunity, in addressing the issues raised in the *Public Notice*, to both resolve still-open critical questions from the *2011 ICC Transformation FNPRM* that are complicating the industry’s implementation of the *Transformation Order* transition, and to take significant strides toward placing the treatment of tandem services on a solid footing for the IP migration. And, there was considerable support in the initial comments of other parties for the concepts that CenturyLink addressed in its filing.

In particular, there was strong support in the initial comments for the two core ICC principles that CenturyLink focused-on in its initial comments. These are that the Commission should clarify that: (1) terminating carriers have a duty to allow direct connections to end offices

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<sup>1</sup> This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

<sup>2</sup> “Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit”, WC Docket No. 10-90, CC Docket No. 01-92, *Public Notice*, 32 FCC Rcd 6856 (2017); 82 Fed. Reg. 44754 (Sep. 26, 2017); *Public Notice*, DA 17-933 (rel. Sep. 26, 2017); Order, DA 17-1106 (rel. Nov. 9, 2017).

or their equivalent upon request; and (2) all types of carriers have a right to equal and fair compensation for equivalent tandem switching and transport services.

The initial comments also demonstrated that immediate adoption of these two broad principles would go a long way toward addressing current ICC concerns – even if the Commission delays in enacting broader ICC reform at this time.

CenturyLink also discusses below AT&T's proposal that tandem switching and transport services should now become subject to mandatory detariffing. As noted in that discussion, there are fundamental challenges with AT&T's proposal. Before it could transition to commercial agreements, the Commission would have to address these risks. In the meantime, the Commission would be better served by simply focusing on ensuring the two principles discussed above.

Finally, CenturyLink once again encourages the Commission to continue to move as expeditiously as possible toward taking other action to address certain access stimulation problems and concerns associated with 8YY usage-based charges and database query charges. As discussed below, these are also areas where the Commission can take immediate steps curbing the significant problems that are plaguing ICC.

## **II. DISCUSSION**

### **A. There Was Strong Support In The Initial Comments For Two Core ICC Principles – Equal Rights To Compensation For All Providers Of Tandem Switching And Transport Services And A Terminating Carrier Obligation To Allow Direct Termination.**

There was strong support in the initial comments for the two core ICC principles that CenturyLink focused on in its initial comments, regarding: (1) a right to establish direct

connections to end offices or their equivalent; and (2) a right to equal and fair compensation to all types of carriers for equivalent tandem switching and transport services.<sup>3</sup>

On the first principle (direct interconnection rights), as AT&T states, “a necessary corollary to any network edge rule is a rule that explicitly guarantees that the party that has the financial responsibility to carry traffic to or from a network edge has the unfettered freedom to choose how, and by what arrangements, that party will carry the traffic on its side of the edge.”<sup>4</sup>

Similarly, GCI affirmed that, when a terminating carrier refuses a direct interconnection request, it “stifles competition among IXCs and transit providers, prevents market forces from disciplining transit rates, and creates inefficiencies in the delivery of interexchange traffic.”<sup>5</sup> The Coalition Carriers’ comments offered detailed concerns on this issue – focusing, in particular, on recent practices by certain CMRS providers.<sup>6</sup> Concerns regarding these practices, in which the CMRS providers refuse to establish direct connects and force carriers to send terminating traffic through certain intermediate carrier partners, would also be addressed if the Commission adopted

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<sup>3</sup> See Comments of CenturyLink, filed herein (Oct. 26, 2017), pp. 3-4, 5-9.

<sup>4</sup> Comments of AT&T Services Inc. to Refresh the Record, filed herein (Oct. 26, 2017), p. 3. *See also, id.*, pp. 8-9 (“...the terminating carriers charging for the tariffed tandem and transport services have no incentive to select the most efficient route, based on economic or engineering considerations—to the contrary, certain carriers are seeking to force the use of particular transport routes because they will be able to collect or share in tariffed tandem and transport charges.”) and *see generally* pp. 6-15.

<sup>5</sup> Comments of General Communication, Inc. in Response to the Public Notice to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit, filed herein (Oct. 26, 2017), pp. 5-6.

<sup>6</sup> Comments of Peerless Network, Inc.; West Telecom Services, LLC; Peninsula Fiber Network, LLC; Alpha Connect, LLC; Rural Telephone Service Company, Inc. d/b/a Nex-Tech, LLC; and Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks (Coalition Carriers), filed herein (Oct. 26, 2017), pp. 14-15 (citations omitted).

CenturyLink’s direct interconnection right proposal. Other commenting parties, while not addressing the issue as directly, echo these same themes.<sup>7</sup>

On the second principle (equal and fair compensation tandem switching and transport services), ITTA captured that concept succinctly:

[U]ltimately, all tandem services should be compensable based on market forces. These companion measures would place all tandem providers on equal footing, thus fulfilling the parity goal also underlying ICC reform. They are also reasonable since all carriers will have network edge points that operate under bill and keep compensation and therefore no carrier will be forced to use tandem switching or transiting services.<sup>8</sup>

Similarly, Verizon acknowledges the current asymmetry in the industry whereby bill and keep only extends to the tandem for some traffic and calls on the Commission to ensure that the edge framework it adopts is fair and symmetrical.<sup>9</sup> AT&T also emphasized the criticality of assuring a single, uniform ICC regime for these services:

The end-state bill-and-keep regime should bring all intermediate, third-party services that carriers use for *indirect* interconnection under one unified regulatory umbrella....[T]he basic concept is the same in all cases: the sending carrier has hired this third party to fulfill its financial obligation to deliver traffic to the terminating carrier’s edge, and all such scenarios should be treated the same in the Commission’s final bill-and-keep regime.[ ] In this way, the final bill-and-keep and network edge rules should create financial arrangements that give the sending carrier appropriate incentives *either* to build out its network *or* to outsource the same network functions

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<sup>7</sup> See e.g. Comments of NCTA – the Internet & Television Association, filed herein (Oct. 26, 2017), p. 6 (“The Commission should not compel competitors to exchange voice traffic at any particular location on the network or at locations that may not be used today for the exchange of voice traffic.”); Comments of Verizon, filed herein (Oct. 26, 2017), pp. 6 and 13 (discussing arbitrage schemes where terminating carriers refuse direct interconnection and stating “The Commission should design the edge rules so that terminating carriers that insist on indirect interconnection are financially responsible for the cost of transit service.”); ITTA – the Voice of America’s Broadband Providers, filed herein (Oct. 26, 2017), pp. 7-15.

<sup>8</sup> ITTA, p. 15.

<sup>9</sup> Verizon, pp. 11-12.

to a third party, depending on whether it is more economically efficient to build or to buy.<sup>10</sup>

And, other commenting parties echo these same themes on this principle as well.<sup>11</sup>

**B. Immediate Adoption Of These Two Broad Principles Would Go A Long Way Toward Addressing Current ICC Concerns – Even If The Commission Delays In Addressing Certain Broader ICC Reform Issues At This Time.**

The initial comments confirmed once-again that there are a variety of important ICC concerns to be attended-to that were presented by the *2011 ICC Transformation FNPRM* – for example, the role of agreements and tariffs in the post-*Transformation Order* world, ensuring that LECs have adequate flexibility when it comes to end-user charges, and IP interconnection.<sup>12</sup> Even if the Commission were to take additional time in addressing these myriad issues, immediate adoption of the two foundational principles discussed above would go a long way.

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<sup>10</sup> AT&T, pp. 15-16 (emphasis in original; citation omitted). AT&T offers these arguments as part of its argued basis for imposing de-tariffing on these services. While, as described below, CenturyLink has concerns with that proposal, it nevertheless agrees with AT&T that the end state for these services should be an equitable and symmetrical right to recovery by all providers.

<sup>11</sup> Comments of the Nebraska Rural Independent Companies (NRIC) in Response to September 26, 2017 Public Notice, filed herein (Oct. 26, 2017), p. 2 (“no carrier should be able to use the network of another carrier ‘free of charge’ regardless of the technology used...” (footnote omitted); Joint Comments of NTCA—the Rural Broadband Association and WTA—Advocates for Rural Broadband (NTCA), filed herein (Oct. 26, 2017), p. 6 (arguing that, in implementing reforms for remaining rate elements, Commission “must do so in a manner that ... facilitates IP-to-IP interconnection by providing stable and clear ‘rules of the road’ governing *all* underlying network technologies without artificial distinctions” (emphasis added)).

<sup>12</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, 18116-19 ¶¶ 1316-24 (2011), *aff’d sub nom.*, *Direct Communs. Cedar Valley, LLC v. FCC and In re: FCC 11-161*, Nos. 11-9900, *et al.*, 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Orders, Aug. 27, 2014, *cert. denied*, 135 S. Ct. 2072, May 4, 2015 (Nos. 14-610, *et al.*) (*Transformation Order* or *2011 ICC Transformation FNPRM*).

The Commission can and should ensure that all providers receive equal and fair compensation for tandem switching and transport services by simply reversing the recent partial reform of only a subset of tandem and switching charges. This will establish the end office as the default network edge for *all* traffic and providers<sup>13</sup> and provide the industry with rational interconnection principles that apply to all providers – as opposed to the patchwork of asymmetric rules that harm the industry today. Similarly, it can bring an end to a host of current ICC problems by simply declaring that the financially responsible party has a right to establish direct connections to end offices or their equivalent. If these two principles, as to which there is near universal agreement, are assured, the Commission can subsequently complete its work on the remaining *2011 ICC Transformation FNPRM* network edge issues for terminating traffic by establishing further rational rules that support these concepts and that are symmetrical for all types of carriers. In the meantime, it will have taken limited and balanced steps that will go a long way toward enabling the market to do the rest and ensure that rates and practices remain reasonable and competitive. And, it will have gone a long way toward addressing current ICC problems currently plaguing the industry and maximizing the prospect of efficient network interconnection as the IP migration continues.

**C. The Few Comments That Oppose These Concepts Are Internally Inconsistent.**

A few parties commenting in the initial round call for a continuation of – or even an expansion of – the current asymmetrical treatment in the industry regarding ICC treatment for tandem switching and transport. But, the positions of these parties are internally inconsistent and should be rejected.

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<sup>13</sup> See Comments of CenturyLink, p. 4.



For example, the Coalition Carriers argue for a continuation of the present “carve-out” by which the tandem switching and transport services of purportedly independent companies continue to be subject to compensation while certain tandem switching and transport services of certain types of carriers have been subjected to bill and keep.<sup>14</sup> Yet, this position rests on a premise that it is somehow fair to impose the costs of tandem switching and transport services on some terminating end users, but not others. Moreover, the Coalition Carriers, later in their comments, argue vociferously that, if they are prevented from being able to charge for tandem switching and transport, they “would likely be forced out of the market [and] ... could not recover costs of providing switching and transport services, infrastructure, deployment upgrades and improvements, and operating and maintenance expenses... [and] [t]his in turn would reduce competitive routing alternatives...”.<sup>15</sup> But, Coalition Carriers wholly ignore that the same impacts will flow to any provider of tandem switching and transport to the extent their services are subject to bill and keep.

Similarly, NCTA advocates that, not only should the Commission, leave the partial Year 6 transition to bill and keep for certain affiliate tandem switching and transport functionality, but it should, as a long term solution, simply expand the scope of services subject to bill and keep based on a broad definition of affiliate.<sup>16</sup> As the Commission is aware, there is an ongoing dispute about the scope of the definition of “affiliate” under its Year 6 and Year 7 *Transformation Order* rules.<sup>17</sup> But, even if a broad interpretation of affiliate were used when transitioning tandem and end office arrangements by affiliated entities to zero, the Commission

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<sup>14</sup> Coalition Carriers, pp. 23-24.

<sup>15</sup> *Id.*, pp. 26-27 (footnotes omitted).

<sup>16</sup> NCTA, pp. 4-5.

<sup>17</sup> 47 C.F.R. §§ 51.907(g), 51.907(h).

would still eliminate the incentive for investment in tandem network services in just some types of configurations (i.e. based on an affiliate relationship), which will lead to arbitrage and inefficiencies. Moreover, the Carrier Coalition's concerns, too, are taken care of if the Commission simply adopts the two principles described above.

It is also noteworthy that, for support of its view, NCTA, in turn, posits a misguided view of the purpose of the *Transformation Order* reforms when it comes to legacy Time Division Multiplexing (TDM) network facilities. NCTA suggests that the goal was to phase-out all revenue streams tied to the use of such facilities and seems to suggest that the *Transformation Order* envisioned a world whereby only the IP functional equivalent of tandem switching and transport is subject to positive compensation. In other words, according to NCTA, it's OK to limit the compensation due for these tandem services using PSTN functionality simply because that's just old TDM functionality. NCTA's comments in this regard miss the critical points. The *Transformation Order* reforms sought to impose bill and keep on certain categories of network services where it is appropriate to impose bill and keep (and thereby impose related costs on the carrier's own end users) and sought to exclude from bill and keep network services where such treatment is not appropriate. In no way does the *Transformation Order* reflect a conclusion by the Commission that it sought to eliminate all revenue streams for TDM facilities in a blanket way. Moreover, another core goal of the *Transformation Order* reforms was to avoid arbitrary line-drawing that precludes some such providers, but not others, from charging for the same functionality. NCTA's views also ignore the fact that – PSTN tandem services are evolving to IP over time and whatever treatment the Commission dictates for those services now, will set the precedent for such services in the IP transition.

**D. The AT&T Proposal Regarding Tariffs Presents Certain Concerns That Must Be Attended-To.**

As noted, AT&T, like CenturyLink, stresses, in its initial comments, the importance of assuring that providers of intermediate network services get compensated for providing these intermediate network services. AT&T suggests that the Commission go a step further and adopt a detariffing transition for tandem switching and transport services “similar to the one it recently adopted in the *Business Data Services* proceeding, in which it set a date certain for mandatory detariffing while permitting permissive detariffing in the interim.”<sup>18</sup> But, AT&T’s proposal presents certain concerns that would need to be attend-to in any plan to change the current tariff regime. Because of this, the Commission would be better off simply focusing on ensuring the two principles discussed above.

The Commission, in the *Transformation Order*, preserved the role of tariffs for access reciprocal compensation during the ongoing *Transformation Order* ICC transition.<sup>19</sup> It also left non-access reciprocal compensation subject to interconnection agreements.<sup>20</sup> However, in the *2011 ICC Transformation FNPRM*, the Commission asked for comment as to whether all types of reciprocal compensation arrangements going-forward (i.e. access and non-access) should be subject to interconnection agreements.<sup>21</sup> CenturyLink believes that it would be unwise as a policy matter, and potentially unlawful, to subject access reciprocal compensation arrangements to the Section 252 interconnection agreement regime.

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<sup>18</sup> AT&T, pp. 15-19.

<sup>19</sup> *Transformation Order*, 26 FCC Rcd at 17939 ¶ 812; *see also 2011 ICC Transformation FNPRM*, *id.* at 18118 ¶ 1322.

<sup>20</sup> *Id.* & ¶ 1323.

<sup>21</sup> *2011 ICC Transformation FNPRM*, *id.* ¶ 1323 (“Although we maintain a role for tariffing as part of the transition, we believe the reliance on interconnection agreements is most consistent with this Order’s application of reciprocal compensation duties to all carriers.”)

There is potential merit to the goal of an eventual transition to commercial agreements, but there are fundamental challenges with this as well. Unlike BDS services, switched access services are still provided in a context of involuntary and mandatory interconnection and strict “no call blocking” obligations. As a result, there is significant risk, should the Commission simply eliminate tariffs, that carriers will be unable to obtain agreements granting them the compensation they are entitled to and yet will also be unable to avoid providing the services – translating to a *de facto* bill and keep regime. Before it could transition to commercial agreements, the Commission would have to address these risks.

**E. Adoption Of Reform Regarding Traffic Stimulation, 8YY Usage-Based Charges And Database Charges Is Another Immediate And Limited Step That Would Go A Long Way Toward Curbing Current ICC Problems.**

On November 16, 2017, a coalition of carriers submitted a letter calling for Commission action to take immediate action to curb the harms associated with ongoing access stimulation schemes.<sup>22</sup> CenturyLink and other parties have also recently weighed in on suggestions for other immediate and limited reform steps that could be taken by the Commission to address concerns associated with 8YY usage-based charges and database charges.<sup>23</sup> Adopting reforms consistent with CenturyLink’s advocacy there would similarly go a long way toward curbing the current problems that are plaguing ICC. CenturyLink looks forward to working with the industry on solutions to address these concerns.

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<sup>22</sup> See ex parte notice letter from Rebekah P. Goodheart, Jenner & Block, Counsel for NTCA and Windstream to Marlene H. Dortch, FCC, filed in WC Docket Nos. 10-90, *et al.* (Nov. 16, 2017).

<sup>23</sup> *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92, Public Notice, 32 FCC Rcd 5117 (2017); Comments of CenturyLink, WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92 (filed July 31, 2017).

### **III. CONCLUSION**

For the reasons stated above, the Commission should take the action described herein.

Respectfully submitted,

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